

In the July 15, 2005, Order, Judge Clark denied respondent's request to set aside the earlier preliminary hearing award. But respondent contends the Judge erred. Respondent argues claimant is not credible and, therefore, he failed to prove he injured his head and neck as alleged. Also, respondent argues claimant's employment contract was formed in Missouri and, therefore, there is no jurisdiction under the Kansas Workers Compensation Act as the accident allegedly occurred in Canada. In addition, respondent contends it should not be responsible for any of claimant's medical expenses or his temporary total disability benefits as claimant declined respondent's offer of medical treatment and he was restricted from working by an unauthorized physician. Accordingly, respondent requests the Board to set aside Judge Clark's preliminary hearing finding that this accident was compensable under the Kansas Workers Compensation Act.

Conversely, claimant requests the preliminary hearing finding to be affirmed.

The issues before the Board on this appeal are:

1. Did claimant prove his contract of employment with respondent was formed in Kansas?
2. If so, did claimant sustain personal injury by accident arising out of and in the course of his employment with respondent?
3. Does the Board have jurisdiction to review findings from a preliminary hearing order regarding whether an employer should pay temporary total disability benefits when the employer denies responsibility on the basis the worker declined authorized treatment and was taken off work by an unauthorized provider?
4. Does the Board have jurisdiction to review findings from a preliminary hearing order regarding whether an employer should pay medical expenses that have been incurred when the employer denies responsibility on the basis that it offered alternative treatment?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes that the Judge's decision to deny respondent's request to set aside the earlier award of preliminary hearing benefits should be affirmed.

Respondent operates a trucking company and maintains headquarters in Joplin, Missouri. Claimant worked for respondent as an over-the-road driver.

One of the principal issues is whether there is jurisdiction under the Kansas Workers Compensation Act. The parties seem to agree that jurisdiction exists under the Act if claimant's contract for employment was formed in Kansas. Although Judge Clark did not make a specific finding in the July 15, 2005, Order regarding where the employment contract between claimant and respondent was formed, the Judge impliedly found that there was jurisdiction under the Act as he declined to set aside the earlier preliminary hearing award.

The facts surrounding the employment contract between claimant and respondent may be further developed at the time of final award, but the present record indicates that claimant contacted respondent in late 2004 about returning to its employ. Claimant was advised that a rehire vote was required and that he would be contacted. The record

indicates someone from respondent later telephoned claimant at his Russell, Kansas, residence and advised him he could be rehired.

Respondent contends it did not offer claimant a job during that telephone conversation but merely invited claimant to Joplin, Missouri, to go through the company's orientation. Conversely, claimant contends respondent during that conversation extended him a job offer, which he accepted. Respondent scheduled claimant's orientation for November 22, 2004, and respondent also made arrangements for a bus pass. In addition, respondent advised claimant he would be paid \$25 per day while attending orientation, the company would pay for his motel accommodations, and the company would pay him 32 cents per mile when he began driving. But claimant did not go to the November 22, 2004, orientation due to personal reasons. Claimant's wife later telephoned respondent and a new orientation date was scheduled for December 6, 2004, which claimant attended.

The Board finds it is more probably true than not that the employment contract between claimant and respondent was formed in Kansas during the second telephone conversation when respondent advised the results of the rehire vote. It is reasonable to conclude that respondent extended an offer of employment to claimant at that time and that claimant accepted. Claimant's testimony regarding those facts is credible. Accordingly, claimant accepted the employment offer from his residence in Kansas. Consequently, the employment contract was formed in Kansas and there is jurisdiction under the Kansas Workers Compensation Act.<sup>1</sup>

In light of the above, the Board concludes the four-day orientation session, drug screening, driving test, integrity interview, and physical examination that claimant was required to undergo in Joplin, Missouri, were not condition precedents to forming the employment contract.

The Board also finds that on or about February 9, 2005, claimant sustained personal injury by accident arising out of and in the course of his employment with respondent. Claimant's testimony is credible that he fell from a trailer that he was climbing to secure a load and was knocked unconscious. According to the testimony at claimant's deposition, claimant first reported the incident the next day to someone in respondent's medical department from a rest stop in New York after he had re-entered the United States. Claimant then headed home to Russell, Kansas.

The record also indicates claimant contacted respondent about his accident on February 16, 2005, as he traveled through the Kansas City-Topeka area on his way home.

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<sup>1</sup> See K.S.A. 44-506.

At some point respondent offered medical treatment if claimant traveled to Joplin, Missouri. But claimant declined respondent's offer and chose, instead, to obtain medical treatment at home. Once at home, claimant went to his family doctor, Dr. M. Katherine Gooch, who restricted claimant from driving his truck and also from riding a bus to Joplin.

Claimant's testimony is consistent with the history of the injury he provided to Hays Medical Center on February 21, 2005. The medical center's notes from that date read, in part:

This is a 48-year-old Caucasian gentleman, a truck driver by profession. He smokes one pack of cigarettes a day. He is being seen because of pain in the cervical area [*sic*] and numbness and tingling in the left upper extremity. The patient states that while he was driving in Canada, delivering goods, he slipped on ice on approximately 02/09/2005. The patient does not remember how he fell down and does not remember the incident. He did not go to the emergency room. The patient drove back, that is two days of driving without any brace or any pain medication. He gives a history of numbness and tingling in the left leg, however, denies any weakness or numbness in the peroneal area. The patient denies any history of bowel and bladder dysfunction.<sup>2</sup>

In conclusion, for preliminary hearing purposes claimant has proven his employment contract was formed in Kansas and that he fell and injured himself while performing work for respondent. Therefore, claimant is entitled to receive benefits from respondent under the Kansas Workers Compensation Act. Accordingly, the Board affirms the Judge's decision to deny respondent's request to set aside the earlier award of preliminary hearing benefits.

As noted above, respondent has challenged claimant's entitlement to both temporary total disability benefits and the payment of previously incurred medical expense on the basis that claimant declined respondent's offer of medical treatment in Joplin, Missouri, and that a doctor that respondent did not authorize restricted him from working. This Board does not have the jurisdiction to review those issues in an appeal from a preliminary hearing order.<sup>3</sup>

As provided by the Kansas Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.<sup>4</sup>

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<sup>2</sup> P.H. Trans. (July 7, 2005), Resp. Ex. 3.

<sup>3</sup> See K.S.A. 44-534a(a)(2) and K.S.A. 2004 Supp. 44-551(b)(2)(A).

<sup>4</sup> K.S.A. 44-534a(a)(2).

**WHEREFORE**, the Board affirms the July 15, 2005, Order entered by Judge Clark.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November, 2005.

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BOARD MEMBER

c: Russell B. Cranmer, Attorney for Claimant  
Victor B. Finkelstein, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director